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October 12, 2016

Honorable Sandra J. Feuerstein
United States District Judge
Long Island Federal Courthouse
100 Federal Plaza, P.O. Box 9014
Central Islip, New York 11722-9014

Re: Colvin v. State University College at Farmingdale, et al.
CV 13-3595

Your Honor:

I am the Assistant Attorney General assigned to handle the above-referenced matter on behalf of the Defendants. This letter is in response to Plaintiff's letter dated October 11, 2016 seeking to "supplement the record" regarding the September 16, 2016 telephone status conference and seeking "the opportunity to submit additional briefing" in an effort to have this Court reconsider of its "Opinion and Order," dated September 28, 2016, dismissing this action based on its reconsideration of the Court's January 19, 2016 order regarding Defendants' Motion for Summary Judgment. The Judgment for the Defendants was filed on September 30, 2016 and the case was closed. Defendants strongly oppose allowing Plaintiff to submit additional briefing regarding the Court's reconsideration of Defendants' Motion for Summary Judgment.

By way of relevant background, Defendants filed their Pre-trial Memorandum on August 29, 2016, seeking dismissal of this action on the *legal* question of whether Plaintiff's speech constituted "covered speech" pursuant to the First Amendment to the United States Constitution. Docket entry no. 105 (hereinafter "DE[#]"). *Plaintiff*, by letter motion filed on September 7, 2016, requested an extension of time to file a Declaration in Opposition to Pretrial Memorandum. See DE[106]. The next day, the Court granted Plaintiff's motion and set a briefing schedule, with Plaintiff serving her opposition and Defendants to Reply. On September 13, 2016, Plaintiff filed her Trial Brief in Opposition. See DE[107]

Prior to Defendants' filing their reply to the motion, the Court scheduled and held a telephonic status conference on September 16, 2016. The Court began the

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conference by asking whether Plaintiff was interested in settling this action for the amount previously proffered by the Defendants; Plaintiff was not. The Court then informed the parties that it would adjourn the trial, set to begin on September 19, 2016, to consider the Defendants' motion. The conference was concluded and Defendants filed their reply in support of the motion later that day.

Plaintiff asserts in her letter that "[j]ust before concluding the conference, Your Honor stated,[sic] she would be reconsidering the Defendants' pretrial memorandum of law." Based on the above, it is clear that Plaintiff knew since September 8, 2016, when the Court set forth the briefing schedule on Defendants' motion, *based on Plaintiff's own motion* (DE[106]), that the Court was seriously considering Defendants' motion to dismiss. In addition, *at no time* during the September 16, 2016 telephone conference did Plaintiff request additional time to file supplemental opposition to Defendants' motion.

Moreover, it was clear that Defendants' Pretrial Memorandum requested the Court to revisit the legal issue of whether Plaintiff's speech was considered "covered speech" pursuant to the First Amendment, which had been raised during Defendants' 2015 Motion for Summary Judgment. It is also clear that Plaintiff, prior to the September 16, 2016 telephone conference, understood that Defendants' Pretrial Memorandum was requesting the Court to reconsider its rulings regarding Defendants' Motion for Summary Judgment, when she stated in her Trial Brief in Opposition that:

It is therefore respectfully submitted that Defendants' latest request for dismissal be denied, as it is a second attempt at a summary judgment motion, which has already been decided in Plaintiff's favor in regard to the free speech issue.

See Plaintiff's "Trial Brief in Opposition," dated September 13, 2016 (DE[107]), Preliminary Statement, at 2. Contrary to Plaintiff's assertions in her October 11, 2016 letter, it is clear that Plaintiff knew prior to the September 16, 2016 telephone conference that the Court was reconsidering its January 19, 2016 "Opinion and Order" regarding Defendants' Motion for Summary Judgment.

Further, since it is clear that Defendants' Pretrial Memorandum requested reconsideration of the Court's January 19, 2016 Order regarding Defendants' Motion for Summary Judgment, there is no question that the Court had the legal authority to consider and issue a decision regarding this motion for reconsideration. See September 28, 2016 "Opinion and Order" (DE[113]), at 2-4. Moreover, not only did Plaintiff submit opposition to Defendants' 2015 Motion for Summary Judgment (DE[71]), but she also submitted Objections to the Report and Recommendation of the Honorable Arlene R. Lindsay, as well as a Reply in Opposition to Defendants' Objections to the Report and Recommendation. See DE[77] and DE[79]. Plaintiff has had numerous opportunities to address the legal issue of whether Plaintiff's speech was considered "covered speech" pursuant to the First Amendment. Allowing Plaintiff now to "submit

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additional briefing” on this legal issue would be redundant and futile. Plaintiff’s only remedy at this point is to appeal the Court’s September 28, 2016 “Order and Opinion” to the United States Second Circuit Court of Appeals.

Accordingly, Defendants strongly oppose allowing Plaintiff to submit additional briefing regarding the Court’s reconsideration of Defendants’ Motion for Summary Judgment.

Respectfully,

s/Toni E. Logue

Toni E. Logue
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